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Supreme Court, U.S.
FILED
APR 26 2000
CLERK

No. 99-1515

IN THE
SUPREME COURT OF THE UNITED STATES

MRO COMMUNICATIONS, INC.,
a Nevada Corporation,
Petitioner,

v.

AMERICAN TELEPHONE &
TELEGRAPH COMPANY, now AT&T Corp.,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITIONER'S REPLY BRIEF

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QUESTION PRESENTED FOR REVIEW

Whether under Fed.R.Civ.P. Rule 68 and *Delta Air Lines v. August*, 450 U.S. 346 (1981), a defendant who makes a formal settlement offer only under Rule 68, which is rejected, and then obtains judgment against the plaintiff offeree on state law claims, may recover attorney's fees against the plaintiff; in a case where state law would prohibit such recovery?

PARTIES TO THE PROCEEDING

Petitioner

The parent company of Petitioner MRO Communications, Inc. ("MRO") is Bellatrix International, Inc. a corporation which has shares issued to the public.

Respondent

The Respondent is AT&T Corporation.

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THE WRIT SHOULD BE GRANTED BECAUSE THE PETITION ON THE MERITS SHOULD BE GRANTED.

As pointed out in MRO's Petition, MRO has also petitioned this Court, Petition No. 99-1480, to reverse the judgment dismissing its antitrust claim in this same action. If that occurs, this attorney's fee judgment must also be reversed. This situation demonstrates why the judgment of the lower court is wrong; the lower court treated state claims differently although Rule 68 makes no distinction. Attorney's fees have been granted AT&T for the judgment in its favor dismissing only MRO's state claims; that judgment has not been appealed. There is no dispute, however, that if the judgment on the antitrust claims is reversed, the fees judgment should be reversed. This is because AT&T's offer of judgment was for the entire action (Petition, App. D).

NEITHER NEVADA STATE LAW NOR *ERIE R. CO. V. TOMPKINS*, 304 U.S. 64, 58 S.CT. 817 (1938) SUPPORTS THE JUDGMENT FOR FEES.

The judgment for fees in this action was rendered because MRO Communications, Inc. ("MRO") rejected an offer of judgment from AT&T (App. A at 3a; AT&T Br. i). That offer of judgment was made only "Pursuant to Rule 68 of the Federal Rules of Civil Procedure," only "in accordance with Fed.R.Civ.P.68", and only "for the purposes specified in Rule 68." No Nevada statute or rule mentions Federal Rule of Civil Procedure 68. Federal Rule 68 does not differentiate between state and federal causes of action. Because no state offer of judgment was made by AT&T, attorney's fees could not be awarded to AT&T even in a

Nevada state court; therefore, there is no state law upon which *Erie* can operate.

AT&T's cases applying state law on offers of judgment made "pursuant to" state law, "in accordance with" state law, or "for the purposes specified" in state law are therefore irrelevant.

AT&T's citation to cases (Br. 7-8) in which offers of judgment were expressly made under state statutes or rules have no application here; those offers didn't mention Federal Rule of Civil Procedure 68. Only in this case has a federal court held that Federal Rule of Civil Procedure applies differently to federal claims and state claims. *Delta Air Lines, Inc. v. August*, 450 U.S. 346, 101 S.Ct. 1146 (1981) should be applied uniformly in federal courts; it is a rule of procedure; *Hanna v. Plumer*, 380 U.S. 460, 85 S.Ct. 1136 (1965).

CONCLUSION.

For the foregoing reasons MRO's Petition should be granted.

Dated: March ____, 2000.

Respectfully submitted,

/s/_____

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